



Qwest
607 14th Street NW, Suite 950
Washington, DC 20005
Phone 202.429.3120
Fax 202.293.0561

Melissa E. Newman
Vice President-Federal Regulatory

EX PARTE

Electronic Filing via ECFS

December 3, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

RE: In the Matter of Unbundled Access to Network Elements, WC Docket No. 04-313;
ET Docket 04-35, Rules Concerning Disruptions to Communications

Dear Ms. Dortch:

On Thursday, December 2, 2004, Dick Notebaert (CEO) and Gary Lytle (Senior Vice President-Federal Relations) of Qwest met with Chairman Michael Powell, Bryan Tramont, Christopher Libertelli and Michelle Carey regarding the above-captioned dockets. The discussion in the meeting was consistent with the comments Qwest filed in these dockets.

With respect to WC Docket 04-313, In the Matter of Unbundled Access to Network Elements, Mr. Notebaert explained that the FCC must consider the availability of special access circuits in its impairment analysis for high-capacity loops and transport. In its most narrow application, the *USTA II* decision compels a finding that carriers that are currently using special access services to serve a particular customer cannot be found to be impaired without access to unbundled network elements to serve those customers, and therefore cannot be permitted to convert their existing special access facilities to unbundled network elements.

In addition, Qwest discussed the need for the Commission to adopt a backstop to the high-capacity loop and transport impairment tests that is under consideration. There are markets today where the FCC's proposed impairment analysis will lead to an erroneous conclusion that the market is not suitable for competition when in fact it is marked by significant and substantial competition. To prevent the anomaly of rules that would conclude that competition cannot exist in a market where in fact it already does, the Commission should adopt a backstop measure to take this into account. Qwest will be filing an *ex parte* on the record to explain its backstop proposal in detail.

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Finally, Mr. Notebaert discussed ET Docket No. 04-35, Rules Concerning Disruptions to Communications, and the huge burdens associated with the DS3 metric and simplex reporting requirements. The DS3 metric measures the network at too low of a level to give the FCC or the Department of Homeland Security any insight into major outages. The burdens associated with the DS3 metric are enormous despite the lack of any countervailing benefits. Similarly, Mr. Notebaert explained that simplex reporting is unnecessary because there is no outage when the network is operating in simplex mode. Rather, the network switches to the alternate path and the customer experiences no degradation in service. Qwest requested that the Commission stay these two aspects of their order.

In accordance with FCC rule 1.49(f), this *ex parte* is being filed electronically via the Electronic Comment Filing System for inclusion in the public record of the above-referenced docket.

Sincerely,

/s/ Melissa E. Newman

Copy to:
Michael Powell (michael.powell@fcc.gov)
Bryan Tramont (bryan.tramont@fcc.gov)
Christopher Libertelli (christopher.libertelli@fcc.gov)
Michelle Carey (michelle.carey@fcc.gov)